



PATENT APPLICATION  
Docket No: 13914.889

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of )  
 )  
 Dalebout et al. )  
 )  
 Serial No.: 10/649,318 )  
 )  
 Filed: August 27, 2003 )  
 )  
 For: EXERCISE DEVICE WITH ELONGATE )  
 FLEXIBLE MEMBER )

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that the following documents are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop: IDS – NO FEE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28 day of November, 2003:

- Transmittal for Information Disclosure Statement (3 pgs.) (in duplicate)
- Information Disclosure Statement (3 pgs.)
- Form PTO-1449 (9 pgs.)
- Copies of 49 references
- Postcard

Respectfully submitted,

Linda Clark, Assistant to  
David B. Dellenbach  
Attorney for Applicant  
Registration No. 39,166  
Customer No. 022913

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## PATENT APPLICATION

Docket No: 13914.889

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Dalebout et al.

Serial No.:

10/649,318

Filed:

August 27, 2003

For:

EXERCISE DEVICE WITH ELONGATE  
FLEXIBLE MEMBER

## TRANSMITTAL FOR INFORMATION DISCLOSURE STATEMENT

Mail Stop: IDS – NO FEE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing and pursuant to 37 C.F.R. § 1.97 is an Information Disclosure Statement, which includes the following statements, if any, required variously by 37 C.F.R. § 1.98:

- ☒ Statement of relevance of selected cited references not in the English language which are not translated.
- ☐ Statement that selected cited references are substantially cumulative of an enclosed or previously submitted reference.
- ☐ Statement that selected cited references were previously cited by or submitted to the United States Patent and Trademark Office in a prior application which is relied upon for an earlier filing date under 35 U.S.C. § 120.

A. Additional Materials Required Due to Content of Information Disclosure Statement

Transmitted are the following documents in addition to the Information Disclosure Statement as required variously under 37 C.F.R. § 1.98:

- ☒ Form PTO-1449 listing 132 references submitted for consideration.
- ☒ Copies of the required 49 references listed on the Form PTO-1449.
- ☐ English translations as indicated on the Form PTO-1449 of the references which are not in the English language.
- ☐ Copies of the following documents from the prosecution of a previous, related application:
  - ☐ Form PTO-1449 AND INFORMATION DISCLOSURE STATEMENT; and
  - ☐ Form PTO-892

B. Additional Materials Required Due to Timing of Filing of Information Disclosure Statement

The transmitted Information Disclosure Statement is being filed within one (1) of the following four (4) time periods:

- I. ☒ Prior to the later of either three (3) months following the filing date or the mailing of a first Office Action. Accordingly, no materials other than those listed above are enclosed.
- II. ☐ Following the latter of either three (3) months following the filing date or the mailing of a first Office Action, but before the mailing of a final Office Action or a Notice of Allowance. Accordingly, to secure consideration thereof, one (1) of the following is also enclosed:
  - ☐ Promptness Certification; or
  - ☐ Credit Card Form PTO 2038 in the amount of \$180.00 constituting the submission fee set forth in 37 C.F.R. § 1.17(p).
- III. ☐ After the mailing of a Notice of Allowance, but before payment of the Issue Fee. Accordingly, in order to secure consideration thereof, each of the following are also enclosed:
  - ☐ Promptness Certificate;
  - ☐ Petition for Consideration; and

\_\_\_\_ Check No. in the amount of \$\_\_\_\_\_ constituting the petition fee set forth in 37 C.F.R. § 1.17(i)(1).

IV. \_\_\_\_ After payment of the Issue Fee. Accordingly, in order to secure consideration thereof, each of the following are also enclosed:

\_\_\_\_ Petition to Withdraw from Issue; and

\_\_\_\_ Check No. \_\_\_\_\_ in the amount of \$\_\_\_\_\_ constituting the petition fee set forth in 37 C.F.R. § 1.17(i)(1).

C. Fees

The Commissioner is hereby authorized to charge payment of or any deficiency in the following fees associated with this communication, or to credit any overpayment thereof, to Deposit Account No. 23-3178. A duplicate copy of this letter is enclosed.

X Any fee required in relation to filing of this letter or any documents transmitted therewith.

\_\_\_\_ The submission fee set forth in 37 C.F.R. § 1.17(p) in the event that 37 C.F.R. § 1.97(c) applies and the Examiner is not satisfied that any Promptness Certificate submitted meets the requirements of 37 C.F.R. § 1.97(e).

\_\_\_\_ The submission fee set forth in 37 C.F.R. § 1.17(p).

\_\_\_\_ The petition fee set forth in 37 C.F.R. § 1.17(i)(1).

Dated this 24<sup>th</sup> day of November, 2003.

Respectfully submitted,



David B. Dellenbach  
Attorney for Applicant  
Registration No. 39,166  
Customer No. 022913



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Docket No: 13914.889

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INFORMATION DISCLOSURE STATEMENT  
UNDER 37 C.F.R. § 1.97

Mail Stop – IDS – NO FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Please find, pursuant to 37 C.F.R. § 1.98(a)(1), the enclosed Form PTO-1449 which contains a list of all patents, publications, or other items that have come to the attention of one or more of the individuals designated in 37 C.F.R. § 1.56(c). While no representation is made that any of these references may be "prior art" within the meaning of that term under 35 U.S.C. §§ 102 or 103, the enclosed list of references is disclosed so as to fully comply with the duty of disclosure set forth in 37 C.F.R. § 1.56.

Moreover, while no representation is made that a specific search of office files or patent office records has been conducted or that no better art exists, the undersigned attorney of record believes that the enclosed art is the closest to the claimed invention (taken in its entirety) of which

the undersigned is presently aware, and no art which is closer to the claimed invention (taken in its entirety) has been knowingly withheld.

In accordance with 37 C.F.R. §§ 1.97 and 1.98, a copy of each of the required references or relevant portion thereof is also enclosed.

Statement of Relevance of References Listed  
Unaccompanied by English Translation  
Under 37 C.F.R. § 1.98(a)(3)

In accordance with 37 C.F.R. § 1.98(a)(3), the following concise explanation of the relevance of each listed reference that is not in the English language and unaccompanied by a translation into English is provided:

**German Patent No. 2 032 544 : Gymnastics hemisphere – of pvc or synthetic rubber.**

**Abstract (Basic) DE 2032544A:** Gymnastics and toy hemisphere is of PVC or synthetic rubber, compressed into a solid body, with holders fitted to the surface.

**Title Terms:** GYMNASTIC; HEMISPHERICAL; PVC; SYNTHETIC; RUBBER.

\* \* \* \* \*

**German Patent No. 3 150 189 A1: Balancing board for games and exercise – has spherical calotte lower part with stand face for rotary and other movement.**

**Abstract (Basic) DE 3150189A:** The balancing board has a spherical calotte or bowl shaped lower part (2) provided on its flat side (9) with a standing surface (11). After a short time the person standing on this board cannot only keep his balance but also by changing the load on the legs and altering the center of gravity can carry out rotating and forward movements.

The board which is easy and small to carry around requires little space in which it can be used, for example, even in a room. The balancing movement can be used as good training for skiing.

**Title Terms:** BALANCE; BOARD; GAME; EXERCISE; SPHERE; CALOTTE; LOWER; PART; STAND; FACE; ROTATING; MOVEMENT.

\* \* \* \* \*

**German Patent No. 3 620 706 A1: Sports or therapy appliance – consists of flat covering plate to which faceted base is fixed.**

**Abstract (Basic) DE 3620706A:** The appliance for use in sport or therapy consists of a flat covering-plate (12) to which is fixed a base (14) shaped like a spherical cap outside. The top of the base (14) has facets (18, 20, 22) at least the part facing away from the cover-plate (12).

The facet (18) furthest away from the plate (12) is parallel to it. Several rings of 8 equi-sized facets surround the facet furthest away from the covering-plate (12).

USE/ADVANTAGE – The piece of sports equipment consists of a faceted based which is moved to a steady position by a person balancing on its flat cover-plate.

Title Terms: SPORTS; THERAPEUTIC; APPLIANCE; CONSIST; FLAT; COVER; PLATE; FACET; BASE; FIX.

\* \* \* \* \*

**German Patent No. 20200269U1, Issued 6/20/2002:** A compliant body-pressing exerciser, apparently equivalent to Great Britain Patent No. GB 2383759.

Please credit any over payment or charge any additional fees to Deposit Account No. 23-3178 of the undersigned.

Dated this 24<sup>th</sup> day of November, 2003.

Respectfully submitted,



David B. Dellenbach  
Attorney for Applicant  
Registration No. 39,166  
**Customer No. 022913**

DBD/lrc  
LC0000000261V001

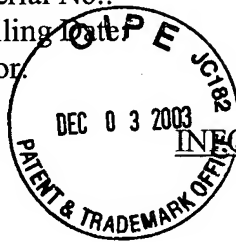
Applicant: Dalebout, et al.

Serial No.: 10/649,318

Att'y Docket No.: 13914.889

Filing Date: August 27, 2003

For: EXERCISE DEVICE WITH ELONGATE FLEXIBLE MEMBER

INFORMATION DISCLOSURE CITATIONS MADE BY APPLICANTU.S. Patent Documents

<u>Examiner Initial*</u>	<u>Document Number</u>	<u>Issue Date/ Publication Date</u>	<u>Name</u>
___ 1	Des. 361,604	August 22, 1995	Stroppiana
___ 2	Des. 481,086	October 21, 2003	Broudy
___ 3	1,585,748	May 25, 1926	Wendelken
___ 4	1,755,205	April 22, 1930	Christensen
___ 5	1,795,304	March 10, 1931	Howard
___ 6	1,861,668	June 7, 1932	Tenney
___ 7	2,077,233	April 13, 1937	Greenhill
___ 8	2,521,530	September 5, 1950	McGuffage
___ 9	2,822,554	February 11, 1958	Wenzelberger
___ 10	2,978,243	April 4, 1961	Gabrielson
___ 11	2,991,589	July 11, 1961	Ayala
___ 12	3,024,021	March 6, 1962	Coplin et al.
___ 13	3,310,320	March 21, 1967	Hanna, et al.
___ 14	3,356,367	December 5, 1967	Tewksbury
___ 15	3,419,267	December 31, 1968	Stolle
___ 16	3,421,163	January 14, 1969	Stoughton
___ 17	3,427,019	February 11, 1969	Brown

Examiner:

Date Considered:

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.



Applicant:

Dalebout, et al.

Serial No.:

10/649,318

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For:

DEC 03 2003

EXERCISE DEVICE WITH ELONGATE FLEXIBLE MEMBER

____ 18	3,511,500	May 12, 1970	Dunn
____ 19	3,604,726	September 14, 1971	Tracy
____ 20	3,627,314	December 14, 1971	Brown
____ 21	3,641,601	February 15, 1972	Sieg
____ 22	3,716,229	February 13, 1973	Van Der Cleyen, et al.
____ 23	3,974,827	August 17, 1976	Bodeen
____ 24	4,065,124	December 27, 1977	Egan
____ 25	4,067,078	January 10, 1978	Winston
____ 26	4,126,129	November 21, 1978	Rainbow
____ 27	4,159,826	July 3, 1979	Hancock
____ 28	4,191,371	March 4, 1980	Armer, Jr.
____ 29	4,263,682	April 28, 1981	Bejarano
____ 30	4,357,724	November 9, 1982	Laforest
____ 31	4,454,869	June 19, 1984	Byler
____ 32	4,516,767	May 14, 1985	Eskijian
____ 33	4,516,768	May 14, 1985	Gallaro
____ 34	4,624,021	November 25, 1986	Hofstetter
____ 35	4,474,370	October 2, 1984	Oman
____ 36	4,779,297	October 25, 1988	Sturges
____ 37	4,801,140	January 31, 1989	Bergeron

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EXERCISE DEVICE WITH ELONGATE FLEXIBLE MEMBER



_____ 38	4,880,226	November 14, 1989	Krantz
_____ 39	4,893,809	January 16, 1990	Blankenzee
_____ 40	4,896,388	January 30, 1990	Bard
_____ 41	4,946,160	August 7, 1990	Bertoletti
_____ 42	5,048,823	September 17, 1991	Bean
_____ 43	5,062,629	November 5, 1991	Vaughn
_____ 44	5,112,045	May 12, 1992	Mason, et al.
_____ 45	5,116,045	May 26, 1992	Jahoda
_____ 46	5,125,880	June 30, 1992	Peters
_____ 47	5,169,363	December 8, 1992	Campanaro, et al.
_____ 48	5,301,441	April 12, 1994	Kownacki
_____ 49	5,333,336	August 2, 1994	Langsam
_____ 50	5,469,592	November 28, 1995	Johnson
_____ 51	5,549,536	August 27, 1996	Clark
_____ 52	5,577,981	November 26, 1996	Jarvik
_____ 53	5,584,787	December 17, 1996	Guidry
_____ 54	5,643,154	July 1, 1997	Awbrey et al.
_____ 55	5,643,165	July 1, 1997	Klekamp
_____ 56	5,685,807	November 11, 1997	Tong, et al.
_____ 57	5,730,690	March 24, 1998	Guidry

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Date Considered:

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Applicant:

Dalebout, et al.

Serial No.:

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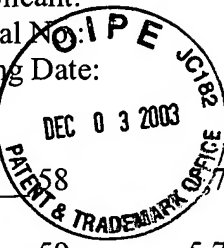
Filing Date:

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Att'y Docket No.: 13914.889

For

EXERCISE DEVICE WITH ELONGATE FLEXIBLE MEMBER



_____ 58	5,755,651	May 26, 1998	Homyonfer et al.
_____ 59	5,766,119	June 16, 1998	Clark
_____ 60	5,782,639	July 21, 1998	Beal
_____ 61	5,810,703	September 22, 1998	Stack
_____ 62	5,813,066	September 29, 1998	Gebhard, et al.
_____ 63	5,851,166	December 22, 1998	Bernardson
_____ 64	5,881,407	March 16, 1999	Chu Pt
_____ 65	5,897,474	April 27, 1999	Romero
_____ 66	6,012,188	January 11, 2000	Daniels et al.
_____ 67	6,168,551 B1	January 2, 2001	McGuinness
_____ 68	6,324,710 B1	December 4, 2001	Hernandez, et al.
_____ 69	6,346,065 B1	February 12, 2002	Lapointe
_____ 70	6,398,616	June 4, 2002	Motosko, III
_____ 71	6,413,194 B1	July 2, 2002	Gant
_____ 72	6,413,197 B2	July 2, 2002	McKechnie, et al.
_____ 73	6,419,611 B1	July 16, 2002	Levine, et al.
_____ 74	6,422,983 B1	July 23, 2002	Weck
_____ 75	6,547,703 B1	April 15, 2003	Swezey, et al.
_____ 76	6,554,753 B1	April 29, 2003	Weck, et al.
_____ 77	6,572,499 B2	June 3, 2003	Davies

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_____	5,575,885 B1	June 10, 2003	Weck, et al.
_____ 79	6,595,586 B2	July 22, 2003	Brightbill, et al.
_____ 80	US 2003/0032533 A1	February 13, 2003	Hecox, et al.
_____ 81	US 2003/0054927 A1	March 20, 2003	Weck, et al.
_____ 82	US 2003/0125173 A1	July 3, 2003	Fan, et al.
_____ 83	US 2003/0125174 A1	July 3, 2003	Lin

Foreign Patent Documents

<u>Examiner</u> <u>Initial*</u>	<u>Document</u> <u>Number</u>	<u>Publication</u> <u>Date</u>	<u>Country or</u> <u>Patent Office</u>
_____ 84	0 134 047	August 5, 1983	EPO
_____ 85	2 032 544	January 13, 1972	Germany (w/Eng. Abstract)
_____ 86	2 195 906	September 25, 1986	U.K.
_____ 87	3 150 189 A1	July 21, 1983	Germany (w/Eng. Abstract)
_____ 88	3 620 706 A1	December 23, 1987	Germany (w/Eng. Abstract)
_____ 89	202 00 269 U1	June 20, 2002	Germany
_____ 90	2 383 759 A	July 9, 2003	U.K.

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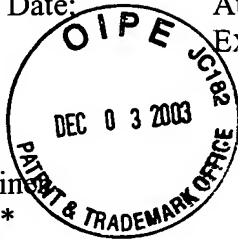
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Examiner  
Initial\*Other Documents

(including author, title, pertinent pages, etc.)

- ✓ 91 Printout of Document Bibliography and Abstract for Patents, 12.espacenet.com/espacenet/abstract (printed October 24, 2003) (1 page).
- ✓ 92 User's Manual for Weider® Bun & Ab Toner Plus, Model No. WETN07970, Copyright 1997 ICON Health and Fitness, Inc. (4 pages). ~~20~~
- ✓ 93 Information Disclosure Statement dated February, 2000, from file history of Patent No. 6,422,983 (10 pages). ✓
- ✓ 94 Information Disclosure Statement dated August, 2000, from file history of Patent No. 6,422,983 (5 pages). ✓
- ✓ 95 Indo Board Balance Trainer, [www.indoboard.com](http://www.indoboard.com), printed March 24, 2000 (4 pages).
- ✓ 96 Bongo Board: Balance Training Systems, [www.balance-boards.com](http://www.balance-boards.com), printed March 24, 2000 (2 pages).
- ✓ 97 Fitter International, Inc., [www.fitter1.com](http://www.fitter1.com), printed March 24, 2000 (7 pages).
- \* 98 Duradisk Wobble Board, etc., [www.paulchekseminars.com](http://www.paulchekseminars.com), available on information and belief, at least as early as February 2000.
- ✓ 99 Exercise Balls; Gymnic Line, etc., [www.balldynamics.com](http://www.balldynamics.com), available on information and belief, at least as early as February 2000.
- ✓ 100 Dyna-Disc Pillow, etc., Perform Better, available on information and belief, at least as early as February 2000.
- ✓ 101 Disc'O'Sit Air Cushion, etc., [www.balldynamics.com](http://www.balldynamics.com), available on information and belief, at least as early as February 2000.
- ✓ 102 Duradisk, etc., [www.paulchekseminars.com](http://www.paulchekseminars.com), available on information and belief, at least as early as February 2000. ✓

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103 ☒ Sit Fit, [www.rpsportsinc.com/balance.htm](http://www.rpsportsinc.com/balance.htm), available on information and belief, at least as early as February 2000.

☒ 104 K.A.T. 2000, [www.oemmedical.com](http://www.oemmedical.com), (printed January 10, 2000) (2 pages).

☒ 105 K.A.T. 500 product sheet, available on information and belief, at least as early as February 2000.

☒ 106 Lower Extremity, Exercise Equipment (K.A.T. Products), available on information and belief, at least as early as February 2000.

☒ 107 K.A.T. 550 product description, available on information and belief, at least as early as February 2000.

☒ 108 Pogo Ball Drawing, available on information and belief, at least as early as February 2000.

☒ 109 [www.myfitnesstrainer.net](http://www.myfitnesstrainer.net), 4 selected screen shots (printed February 26, 2001).

☒ 110 JUMP BOARD: Digital Photographs showing a toy called a "jump board" made by Hedstrom Corporation, available on information and belief, at least as early as August 2000.

☒ 111 MFT - My Fitness Trainer.net, [www.myfitnesstrainer.net](http://www.myfitnesstrainer.net), (printed August 12, 2003) (4 pages).

☒ 112 Forsport - MFT Balance Disc, [www.forsport.co.uk](http://www.forsport.co.uk), (printed August 12, 2003) (1 page)

☒ 113 My Fitness Trainer.net. Exercise programme for the MFT Balance Disc (copyright 2000) (14 pages).

☒ 114 Stamina Exercise Mats, [www.workout-mat.com](http://www.workout-mat.com), (printed September 9, 2003) (2 pages).

☒ 115 Denise Austin Hour Glass Workout Ball, [www.workout-mat.com](http://www.workout-mat.com), (printed September 9, 2003) (2 pages).

☒ 116 Denise Austin's Hour Glass Workout Ball, <http://goodsanddeeds.com>, (printed September 9, 2003) (2 pages).

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Serial No.: 10/649,318  
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For: EXERCISE DEVICE WITH ELONGATE FLEXIBLE MEMBER



Att'y Docket No.: 13914.889

- ☒ 117 Photographs of neck cushion device (photographs taken in September 2003), having dimensions of approximately 3 3/8 inches in height, 8 3/8 inches in length, and 3 7/8 inches in width, available on information and belief, prior to August 27, 2003 (11 pages).
- ☒ 118 Body Dome Owner's Manual, copyright 2003, Available prior to August 27, 2003 (15 pages).
- ☒ 119 Body Dome Exercise Program, copyright 2003, Available prior to August 27, 2003 (13 pages).
- ☒ 120 Fitter first; balance and fitness for life, Summer 2003, Available at least as early as August 14, 2003 (8 pages).
- ☒ 121 OTP, [www.optp.com](http://www.optp.com), (copyright 2002) (10 pages).
- ☒ 122 New OPTO Annual Catalog, copyright 2003, Available at least as early as August 14, 2003 (8 pages).
- ☒ 123 Vew-Do Balance Boards Board Guide (copyright 2001) (2 pages).
- ☒ 124 Cordisc (copyright 2003) (2 pages).
- ☒ 125 Egg Ball, [www.abestmall.com](http://www.abestmall.com), (printed August 1, 2003) (1 page).
- ☒ 126 Hammacher Schlemmer Egg Chair, [www.hammacher.com](http://www.hammacher.com), (printed August 1, 2003) (1 page).
- ☒ 127 Bodytrends Egg Balls, [www.bodytrends.com](http://www.bodytrends.com), (printed August 1, 2003) (1 page).
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- ☒ 129 Body Dome, [www.bodydome.com](http://www.bodydome.com), (printed May 20, 2003) (17 pages).
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- ☒ 132 Tri-Ball Workout Set, A Ball for Every-Body, copies of shipping container, copyright 2003, (11 pages).

Examiner:

Date Considered:

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Form PTO-1449

Applicant:

Serial No.:

Filing Date:

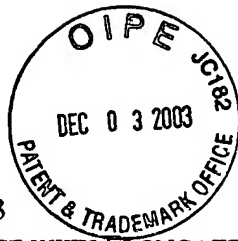
For:

Dalebout, et al.

10/649,318

August 27, 2003

EXERCISE DEVICE WITH ELONGATE FLEXIBLE MEMBER



Sheet 9 of 9

Att'y Docket No.: 13914.889

### References Cited by Applicants

While the filing of Information Disclosure Statements is voluntary, the procedure is governed by the guidelines of Section 609 of the Manual of Patent Examining Procedure and 37 C.F.R. §§ 1.97 and 1.98. To be considered a proper Information Disclosure Statement, Form PTO-1449 shall be accompanied by a copy of each listed patent or publication or other item of information and a translation of the pertinent portions of foreign documents (if an existing translation is readily available to the applicant), an explanation of relevance of each reference not in the English language, and should be submitted in a timely manner as set out in MPEP Sec. 609.

Examiners will consider all citations submitted in conformance with 37 C.F.R. § 1.98 and MPEP Sec. 609 and place their initials adjacent the citations in the spaces provided on this form. Examiners will also initial citations not in conformance with the guidelines which may have been considered. A reference may be considered by the Examiner for any reason whether or not the citation is in full conformance with the guidelines. A line will be drawn through a citation if it is not in conformance with the guidelines AND has not been considered. A copy of the submitted form, as reviewed by the Examiner, will be returned to the applicant with the next communication. The original of the form will be entered into the application file.

Each citation initialed by the Examiner will be printed on the issued patent in the same manner as references cited by the Examiner on Form PTO-892.

The reference designations "A1," "A2," etc. (referring to Applicant's reference 1, Applicant's reference 2, etc.) will be used by the Examiner in the same manner as Examiner's reference designations "A," "B," "C," etc. on Office Action Form PTO-1142.

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